

AMENDED IN SENATE AUGUST 7, 2006

AMENDED IN ASSEMBLY MAY 26, 2006

AMENDED IN ASSEMBLY MAY 1, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2886

Introduced by Assembly Member Frommer
(Coauthor: Assembly Member Lieu)
(Coauthor: Senator Poochigian)

February 24, 2006

An act to amend Section 530.5 of, and to add Section ~~593h~~ 530.55 to the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 2886, as amended, Frommer. Crime.

~~Existing law provides that every person who willfully obtains personal identifying information about another person, as defined, and uses that information for any unlawful purpose is guilty of a crime punishable by imprisonment in a county jail not to exceed one year, or a fine not to exceed \$1,000, or both, or by imprisonment in the state prison, or a fine not to exceed \$10,000, or both. Existing law also provides that every person who, with the intent to defraud, acquires, transfers, or retains possession of the personal identifying information, as defined, of another person, is guilty of a crime punishable by imprisonment in the county jail not exceeding a year, a fine not exceeding \$1,000, or by both that imprisonment and fine.~~

~~This bill, would provide that a 2nd or subsequent violation of these provisions is also punishable by a fine not to exceed \$10,000; imprisonment in the state prison for 16 months, or 2 or 3 years, or by~~

~~both that fine and imprisonment. This bill would also provide that every person who, with intent to defraud, sells, transfers, or conveys, the personal information of another without that person's consent is guilty of grand theft, punishable by imprisonment in a county jail for a period not exceeding one year or in the state prison for 16 months, or 2 or 3 years.~~

~~Because this bill would create new crimes, this bill would impose a state-mandated local program.~~

Existing law provides that every person who, with the intent to defraud, acquires, transfers, or retains possession of the personal identifying information of another person is guilty of a crime punishable by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment.

This bill would instead provide that every person who, with the intent to defraud, acquires or retains possession of the personal identifying information of another person, and who has previously been convicted of a violation of provisions proscribing identity theft, or who, with the intent to defraud, acquires or retains possession of the personal identifying information of 10 or more other persons, shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment in the state prison. This bill would also provide that any person who, with intent to defraud, or who knows or reasonably should know that the identifying information will be used to commit identity theft, sells, transfers, or conveys the personal identifying information of another person shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment in the state prison.

This bill would specify that, for purposes of these provisions, "person" includes natural persons living and deceased, and organizations, associations, business relationships and other legal entities, expand the definition of "personal identifying information" to include any identifying information that uniquely describes a person, and make other conforming changes.

Because this bill would expand the definition of existing crimes and create new crimes, it would impose a state-mandated local program.

Existing federal law provides that mail theft is punishable by a fine, imprisonment for a period not exceeding 5 years, or by both.

~~This bill would provide that mail theft and receipt of stolen mail are crimes, as defined, is punishable by a fine not exceeding \$1,000,~~

imprisonment in a county jail for a period not exceeding one year, or by both ~~that a fine and imprisonment, or by a fine not exceeding \$10,000, imprisonment in the state prison for a period not exceeding 16 months, or 2 or 3 years, or by both that fine and imprisonment, as specified. This bill would also provide that the jurisdiction of a criminal action for violation of these provisions shall include the county in which the mail theft or receipt of stole mail occurred and the county in which the residence or place of business of the direct victim or an indirect victim is located.~~ Because this bill would create new crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 “Personal Information Trafficking and Mail Theft Prevention
3 Act.”
4 SEC. 2. Section 530.5 of the Penal Code is amended to read:
5 530.5. (a) Every person who willfully obtains personal
6 identifying information, as defined in subdivision (b) of *Section*
7 *530.55*, of another person, and uses that information for any
8 unlawful purpose, including to obtain, or attempt to obtain,
9 credit, goods, services, *real property*, or medical information ~~in~~
10 ~~the name of the other person~~ without the consent of that person,
11 is guilty of a public offense, and upon conviction therefor, shall
12 be punished ~~either by a fine, by imprisonment in a county jail not~~
13 ~~to exceed one year, a fine not to exceed one thousand dollars~~
14 ~~(\$1,000), or both that imprisonment and fine by both a fine and~~
15 ~~imprisonment, or by imprisonment in the state prison, a fine not~~
16 ~~to exceed ten thousand dollars (\$10,000), or both that~~
17 ~~imprisonment and fine.~~
18 (b) ~~“Personal identifying information,” as used in this section,~~
19 ~~means the name, address, telephone number, health insurance~~

1 identification number, taxpayer identification number, school
2 identification number, state or federal driver's license number, or
3 identification number, social security number, place of
4 employment, employee identification number, mother's maiden
5 name, demand deposit account number, savings account number,
6 checking account number, PIN (personal identification number)
7 or password, alien registration number, government passport
8 number, date of birth, unique biometric data including
9 fingerprint, facial scan identifiers, voiceprint, retina or iris image,
10 or other unique physical representation, unique electronic data
11 including identification number, address, or routing code,
12 telecommunication identifying information or access device,
13 information contained in a birth or death certificate, or credit card
14 number of an individual person.

15 (e) In any case in which a person willfully obtains personal
16 identifying information of another person, uses that information
17 to commit a crime in addition to a violation of subdivision (a),
18 and is convicted of that crime, the court records shall reflect that
19 the person whose identity was falsely used to commit the crime
20 did not commit the crime.

21 ~~(d) (1)~~

22 (b) (1) Every person who, with the intent to defraud, acquires,
23 or retains possession of the personal identifying information, as
24 defined in subdivision (b) of Section 530.55, of another person is
25 guilty of a public offense, and upon conviction therefor, shall be
26 punished by a fine, by imprisonment in a county jail not to
27 exceed one year, or a fine not to exceed one thousand dollars
28 (\$1,000), or by both that imprisonment and fine both a fine and
29 imprisonment.

30 (2) Every person who, with the intent to defraud, acquires or
31 retains possession of the personal identifying information, as
32 defined in subdivision (b) of Section 530.55, of another person,
33 and who has previously been convicted of a violation of this
34 section upon conviction therefor shall be punished by a fine, by
35 imprisonment in a county jail not to exceed one year, or by both
36 a fine and imprisonment, or by imprisonment in the state prison.

37 (3) Every person who, with the intent to defraud, acquires or
38 retains possession of the personal identifying information, as
39 defined in subdivision (b) of Section 530.55, of 10 or more other
40 persons is guilty of a public offense, and upon conviction

1 *therefor, shall be punished by a fine, by imprisonment in a county*
2 *jail not to exceed one year, or by both a fine and imprisonment,*
3 *or by imprisonment in the state prison.*

4 *(c) Every person who, with the intent to defraud, or who*
5 *knows or reasonably should know that the identifying*
6 *information will be used to commit a violation of subdivision (a),*
7 *sells, transfers, or conveys the personal identifying information,*
8 *as defined in subdivision (b) of Section 530.55, of another person*
9 *is guilty of a public offense, and upon conviction therefor, shall*
10 *be punished by a fine, by imprisonment in a county jail not to*
11 *exceed one year, or by both a fine and imprisonment, or by*
12 *imprisonment in the state prison.*

13 ~~(2) If a person has previously been convicted of a violation of~~
14 ~~this section and subsequently violates this subdivision, he or she~~
15 ~~shall be punished by a fine not to exceed one thousand dollars~~
16 ~~(\$1,000), imprisonment in a county jail for a period not to exceed~~
17 ~~one year, or by both that fine and imprisonment, or by a fine not~~
18 ~~to exceed ten thousand dollars (\$10,000), imprisonment in the~~
19 ~~state prison for 16 months, or two or three years, or by both that~~
20 ~~fine and imprisonment.~~

21 ~~(e) Every person who, with the intent to defraud, sells,~~
22 ~~transfers, or conveys, the personal identifying information of~~
23 ~~another, without that person's consent, is guilty of grand theft,~~
24 ~~punishable by imprisonment in a county jail for a period not~~
25 ~~exceeding one year or in the state prison for 16 months, or two or~~
26 ~~three years.~~

27 ~~(f) Every person who, with the intent to defraud, acquires,~~
28 ~~transfers, or retains possession of the personal identifying~~
29 ~~information, as defined in subdivision (b), of another person who~~
30 ~~is deployed to a location outside of the state is guilty of a public~~
31 ~~offense, and upon conviction therefor, shall be punished by~~
32 ~~imprisonment in a county jail not to exceed one year, or a fine~~
33 ~~not to exceed one thousand five hundred dollars (\$1,500), or by~~
34 ~~both that imprisonment and fine.~~

35 ~~(g) For purposes of this section, "deployed" means that the~~
36 ~~person has been ordered to serve temporary military duty during~~
37 ~~a period when a presidential executive order specifies that the~~
38 ~~United States is engaged in combat or homeland defense and he~~
39 ~~or she is either a member of the armed forces, or is a member of~~
40 ~~the armed forces reserve or the National Guard, who has been~~

1 ~~called to active duty or active service. It does not include~~
2 ~~temporary duty for the sole purpose of training or processing or a~~
3 ~~permanent change of station.~~

4 SEC. 3. Section 593h is added to the Penal Code, to read:

5 593h. (a) As used in this section:

6 (1) "Authorized depository" means a mailbox, post office box
7 or rural box used by postal customers to deposit outgoing mail or
8 used by the Postal Service to deliver incoming mail.

9 (2) "Mail" means any letter, card, parcel or other material that:

10 (A) Is sent or delivered by means of the Postal Service.

11 (B) Has postage affixed by the postal customer or Postal
12 Service or has been accepted for delivery by the Postal Service.

13 (C) Is placed in any authorized depository or mail receptacle
14 or given to any Postal Service employee for delivery.

15 (3) "Mail receptacle" means any location used by the Postal
16 Service or postal customers to place outgoing mail or receive
17 incoming mail.

18 (4) "Postage" means a Postal Service stamp, permit imprint,
19 meter strip or other authorized indication of prepayment for
20 service provided or authorized by the Postal Service for
21 collection and delivery of mail.

22 (5) "Postal Service" means the United States Postal Service.

23 (b) A person commits the crime of mail theft or receipt of
24 stolen mail if the person intentionally, without claim or pretense
25 of right, does any of the following:

26 (1) Takes or, by fraud or deception, obtains mail of another
27 from a post office, postal station, mail receptacle, authorized
28 depository, or mail carrier.

29 (2) Takes from mail of another any article contained therein.

30 (3) Secretes, embezzles, or destroys mail of another or any
31 article contained therein.

32 (4) Takes or, by fraud or deception, obtains mail of another
33 that has been delivered to or left for collection on or adjacent to a
34 mail receptacle or authorized depository.

35 (5) Buys, receives, conceals, or possesses mail of another or
36 any article contained therein knowing that the mail or article has
37 been unlawfully taken or obtained.

38 (c) Mail theft or receipt of stolen mail is a crime punishable by
39 a fine not exceeding one thousand dollars (\$1,000),
40 imprisonment in a county jail for a period not exceeding one

1 year, or by both that fine and imprisonment, or by a fine not
2 exceeding ten thousand dollars (\$10,000), imprisonment in the
3 state prison for 16 months, or two or three years, or by both that
4 fine and imprisonment.

5 (d) The jurisdiction of a criminal action for violation of this
6 section shall include all of the following:

7 (1) The county in which the mail theft or receipt of stolen mail
8 occurred.

9 (2) The county in which the residence or the place of business
10 of the direct victim or an indirect victim of the mail theft or
11 receipt of stolen mail is located.

12 (e) It is a defense to prosecution pursuant to this section that
13 the defendant acted under an honest claim of right in that:

14 (1) The defendant was unaware that the property was that of
15 another person.

16 (2) The defendant reasonably believed that the he or she was
17 entitled to the property involved or had a right to acquire or
18 dispose of it as the defendant did.

19 (3) The property involved was that of the defendant's spouse,
20 unless the parties were not living together as husband and wife
21 and were living in separate households at the time of the alleged
22 offense.

23 (e) This section does not apply to an employee charged with
24 the operation of a county jail, local detention facility, or facility
25 under the supervision of the Department of Corrections and
26 Rehabilitation if the employee is carrying out his or her official
27 duties to protect the safety and security of the facility.

28 (d) Every person who commits mail theft, as defined in Section
29 1705 of Title 18 of the United States Code, is guilty of a public
30 offense, and upon conviction therefor shall be punished by a fine,
31 by imprisonment in a county jail not to exceed one year, or by
32 both a fine and imprisonment. Prosecution under this subdivision
33 shall not limit or preclude prosecution under any other provision
34 of law, including, but not limited to subdivisions (a) to (c),
35 inclusive, of this section.

36 SEC. 3. Section 530.55 is added to the Penal Code, to read:

37 530.55. (a) For purposes of this chapter, "person" means a
38 natural person, living or deceased, firm, association,
39 organization, partnership, business trust, company, corporation,

1 *limited liability company, or public entity, or any other legal*
2 *entity.*

3 *(b) For purposes of this chapter, “personal identifying*
4 *information” means either of the following:*

5 *(1) Any name or number that may be used alone, or in*
6 *conjunction with any other information, to identify a specific*
7 *individual person, by name, address, telephone number, health*
8 *insurance number, taxpayer identification number, school*
9 *identification number, state or federal driver’s license, or*
10 *identification number, social security number, place of*
11 *employment, employee identification number, professional or*
12 *occupational number, mother’s maiden name, demand deposit*
13 *account number, savings account number, checking account*
14 *number, PIN (personal identification number) or password, alien*
15 *registration number, government passport number, date of birth,*
16 *unique biometric data including fingerprint, facial scan*
17 *identifiers, voice print, retina or iris image, or other unique*
18 *physical representation, unique electronic data including*
19 *information identification number assigned to the person,*
20 *address or routing code, telecommunication identifying*
21 *information or access device, information contained in a birth or*
22 *death certificate, or credit card number of an individual person.*

23 *(2) Any other identifying information that uniquely describes a*
24 *person.*

25 SEC. 4. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the
30 penalty for a crime or infraction, within the meaning of Section
31 17556 of the Government Code, or changes the definition of a
32 crime within the meaning of Section 6 of Article XIII B of the
33 California Constitution.